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July 22, 2004

**SUMMARY OF
EX PARTE PRESENTATION**

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

Re: Ex Parte Presentation WC Docket No. 03-133

Dear Ms. Dortch:

On July 21, 2004, James W. Olson and the undersigned, United States Telecom Association (USTA), Rob Binder, Citizens Communications, Colin Sandy, NECA, and Jack Zinman, SBC Telecommunications, Inc., met with Matthew A. Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy, and Marjorie Manne of the same office. The purpose of the meeting was to discuss AT&T Corporation's Petition for Declaratory Ruling regarding certain prepaid calling card services. The substance of USTA's discussion is set forth in the attached handout.

In accordance with Section 1.1206(b)(2) of the Federal Communications Commission's (FCC) rules, this letter is being filed electronically with your office. Please feel free to contact me at (202) 326-7271 should you have any questions.

Sincerely,

A handwritten signature in blue ink, which appears to read "Michael T. McMenamin", is positioned above a horizontal line.

Michael T. McMenamin
Associate Counsel

Attachment

cc: Matthew A. Brill



AT&T's Prepaid Calling Card Petition

July 21, 2004



What AT&T Claims

- In May 2003, AT&T filed a Petition for Declaratory Ruling with the FCC
- The Petition seeks a declaration that certain prepaid calling card calls are interstate telecommunications (rather than intrastate) and are not subject to intrastate access charges
- AT&T claims that prepaid calling card calls are “information services” because the calling card calls link to a recorded advertisement on a service platform in another state before completion of the call
- Example:
 - Caller “A” in New York, NY wishes to call “B” in Buffalo, NY
 - “A” obtains an AT&T prepaid calling card from a retailer
 - “A” initiates the call by dialing an 8YY number; the call is routed to an AT&T platform in Iowa City, Iowa
 - “A” hears the advertisement
 - At the completion of the advertised message, “A” then dials the call to “B” in Buffalo
- Based on its claim that its calling cards offer an information service, AT&T has also revealed it is not contributing to USF for such cards

AT&T's Petition Should be Denied

- Prepaid calling card service is not an “information service” under the Act
 - AT&T's prepaid calling card service does not offer a customer the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information”
 - The only “capability” offered a customer is to use AT&T's prepaid calling card to make a basic phone-to-phone call
- The FCC should act quickly to deny AT&T's Petition, so that other companies offering prepaid calling card service do not imitate AT&T's improper actions

AT&T's Petition Should be Denied (cont'd)

- In the *Time Machine, Inc.* (TMI), 11 FCC Rcd 1186 (1995), declaratory ruling, the FCC held that a service identical to AT&T's prepaid calling card service was not solely interstate telecommunications
 - TMI sought a declaration that its 800-access telecommunications debit card service was interstate and that intrastate regulation did not apply
 - The FCC determined that when a debit card call originates and terminates in the same state, the call is intrastate, even when the call is processed out of state
- In the same Order, the FCC rejected AT&T's support of TMI's preemption claim, and found that AT&T's Teleticket debit card capability was required to be a tariffed telecommunications service
 - A customer using Teleticket dials a number to reach an AT&T 800 platform, where the customer accesses news, weather and other services or dials another number to complete a call
 - The FCC clarified that while "[t]he enhanced services provided through Teleticket are non-regulated services . . . [t]he long distance calling capability using the Teleticket debit card, however, is a basic debit card interstate calling capability that must be taken by AT&T's enhanced services provider pursuant to tariff"
 - While the recorded news, weather reports and other services are enhanced, the long distance calling capability is basic telecommunications service
 - AT&T's prepaid calling card service is also a basic telecommunications service

AT&T's Petition Should be Denied (cont'd)

- FCC decisions cited by AT&T do not support the proposition that prepaid calling cards are “information services”
 - In the *Talking Yellow Pages Order*, 2 FCC Rcd 5986 (1987), consumers dialed into a yellow pages service to acquire advertising information. The FCC held that the talking yellow pages was an enhanced service. Unlike AT&T's petition, the consumer chose to receive an advertising message and was not making a basic phone-to-phone call.
 - The *AT&T CEI Order*, 6 FCC Rcd 4839 (1991), dealt with an AT&T interactive voice platform that permitted voice messaging. The Bureau (not the FCC as AT&T claims) allowed AT&T to amend the service which already qualified as an enhanced service offered pursuant to a CEI plan. The Bureau merely allowed an amendment to the CEI plan to permit calls to be made while logged into the platform.
 - In the *US West CI III Waiver Order*, 11 FCC Rcd 1195 (1995), US West's “reverse search capability” (where an end user dialed a telephone number and learned the associated name and address) was at issue. The FCC found that US West's “reverse search capability” was an enhanced service. Unlike AT&T's petition, the “reverse search capability” involved the provisioning of additional information not used to facilitate a telephone call.

AT&T's Petition Should be Denied (cont'd)

- *US West CI III Waiver Order on Recon.*, 11 FCC Rcd 7997 (1996), reaffirmed US West's "reverse search capability" as an enhanced service. If the "primary purpose" of a service is to place a phone call, then it is deemed to be telecommunications. AT&T's prepaid calling card service is clearly a telecommunications service.
- In the *NATA/Centrex Order*, 3 FCC Rcd 4385 (1988), the FCC found that "Customer Dialed Account Recording" (which allows a customer to dial an account code prior to dialing a phone number to signal a database to record various information associated with the call) was enhanced because it provided the customer something beyond ordinary phone service. This case has nothing to do with AT&T's basic calling card service.

AT&T's Admissions

- In its May 10, 2004 SEC filing, AT&T made the following admissions:
 - AT&T has generated approximately \$215 million in access charge “savings” since the third quarter of 2002
 - Since 1999, AT&T has withheld \$140 million in USF contributions
 - AT&T admitted that an adverse FCC ruling may expose it to “retroactive liability”

Timeline of AT&T's Misconduct

- 1999 – USF non-payment begins
- 2002 – Intrastate access avoidance begins
- March 2003 – Alaska Regulatory Commission ordered AT&T Alascom to provide information on prepaid card issues by April 17 (extended at AT&T's request to May 16)
- May 15, 2003 – AT&T files FCC petition on jurisdictional issue
- May 2004 – AT&T reveals USF non-payment and duration and extent of access avoidance in SEC 10Q filing

The Effect of AT&T's Self-Help

- USTA member companies depend on revenue generated from intrastate access charges to maintain and upgrade their networks
- AT&T's improper avoidance of intrastate access charges negatively impacts the financials of all LECs and could threaten the financial viability of small rural LECs
- Loss of USF contributions from prepaid calling cards could have strongly detrimental consequences for the USF

Remedy

- FCC must deny AT&T's petition and find that AT&T has flagrantly violated the FCC's rules
- As a matter of law, AT&T's intrastate access charge and USF obligations must apply prospectively and retroactively
- The FCC should impose forfeitures and interest payments as appropriate for the improper withholding of access charges and USF contributions